

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 252 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MAKBULALI AKBARALI

Versus

STATE OF GUJARAT

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Appearance:

MR IS SUPEHIA for Petitioner

MR NN PANDYA for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/07/96

ORAL JUDGEMENT

Heard learned counsel for the parties. The challenge is made by the petitioner by this writ petition to the order of the respondents dt. 29th November, 1975 Annexure A under which he was ordered to be dismissed

from services after holding Departmental Inquiry. The petitioner was holding the post of Police Constable (Unarmed). He was chargesheeted with the serious allegation of illegal gratification. Only contention made by the learned counsel for the petitioner is that the order of punishment has been made by the authority below than the appointing authority of the petitioner. The learned counsel for the petitioner contended that the appointment of the petitioner was made by the Commissioner of Police, whereas Deputy Commissioner of Police has passed the order and as such only on this ground, this writ petition deserves to be allowed. I do not find any substance in this contention. The petitioner has not produced his order of appointment on the record of this special civil application.

Respondent in reply has denied that the petitioner was appointed by the Commissioner of Police. It is the case of the respondent that the petitioner has been appointed by the Deputy Commissioner of Police. The counsel for the petitioner has tried to persue this court that identical issue has been decided in the case of other Constables in Civil Suit and appeal was filed and that appeal has also been dismissed by this court. It is a question of fact that who is the appointing authority of the petitioner and it is for the petitioner to establish and the petitioner cannot be given benefit of the decision of the civil court which has been given in the case of other person. The petitioner has to stand on his own merit. Otherwise also, the petitioner was dismissed from service by the order dt. 29th November, 1975. This writ petition has been filed by him before this court on 24th August, 1983 i.e. after about eight years of his dismissal. Dismissal order is appealable and he has not availed of any departmental remedy against it. It shows that grievances have been made against the order of dismissal, when civil court has decided an issue in the matter of other persons. The petitioner has taken a clue of filing special civil application from that decision after long delay for which there is no explanation in this petition and he has not furnished any explanation whatsoever for such a long delay made by him in filing this special civil application. He has failed to give explanation how he could not have taken action against the order of dismissal by filing the appeal. The delay does not only defeat the remedy but also the right. The petitioner has been chargesheeted for serious misconduct of acts of illegal gratification and the counsel for the petitioner has not challenged the dismissal on merits. He has only challenged the order of dismissal on technical ground but this petition cannot be

entertained after such a long delay which has been made by the petitioner in approaching this court, and no relief can be granted. Yet there is another ground on which no interference is called for in this matter. The counsel for the petitioner though unable to give any satisfactory explanation for delay but made submissions that delay may be taken as the period for which he may not be given any backwages. A person who has slept over his right of challenging the order of dismissal within a reasonable period, acquiesced in his own acts. This conduct itself is sufficient for dismissal of this special civil application. Taking into consideration the totality of the facts and circumstances of the case, no interference is called for in the matter and as such this special civil application is dismissed. Rule discharged.

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